



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,576	01/25/2002	Jordan C. Bonney	1032-002US01	1885
28863	7590	10/02/2006	EXAMINER	
SHUMAKER & SIEFFERT, P. A. 8425 SEASONS PARKWAY SUITE 105 ST. PAUL, MN 55125			CHO, HONG SOL	
			ART UNIT	PAPER NUMBER
			2616	

DATE MAILED: 10/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

sf

Office Action Summary	Application No. 10/057,576	Applicant(s) BONNEY ET AL.	
	Examiner Hong Cho	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-14, 17-22 and 24-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5, 7-14 and 17-21 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 22, 31 and 32 is/are rejected.
- 7) ☐ Claim(s) 3, 24-30 and 33-38 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This office action is in response to the amendment filed on 8/16/2006. Claims 6, 15, 16 and 23 were canceled. Claims 1-5, 7-14, 17-22 and 24-38 are pending in the instant application.

Claim Objections

2. Claims 2 and 4 are objected to because of the following informalities:

Re claim 2, it is not clear how displaying the non-duplicate network packets is related to displaying a representative packet for the duplicate packets.

Re claim 4, it is not clear how displaying the duplicate network packets is related to filtering the non-duplicate packets.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 2, 4, 22, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kant et al (US 6836466), hereinafter referred to as Kant in view of Corlett et al (USPUB 20030023710) and further in view of Leong et al (US 6810017), hereinafter referred to as Leong.

Re claims 1, 22 and 32, Kant discloses capturing network packets from a network using a plurality of distributed agents (passive monitors, figure 1, elements 112 and 114) positioned at different locations within the network, communicating the network packets to an analyzer (a data analyzer, element 116) coupled to the network. Kant fails to disclose identifying duplicate network packets, but Corlett discloses identifying duplicate packets (paragraph [0053], lines 9-10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the data analyzer of Kant by adding to it the feature of identifying duplicate packets so that the data analyzer would provide correct packet throughput by accounting for duplicated packets. Kant fails to disclose displaying non-duplicate packets or a selected representative packet for the duplicate packets. Leong discloses presenting frames in display window (column 5, lines 18-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the data analyzer of Kant by adding to it the feature of presenting duplicate and non-duplicate packets so that a user would identify duplicate and non-duplicate packets in graphical format.

Re claims 2, 22 and 32, Kant fails to disclose displaying a selected representative packet for the duplicate packets. However, it would have been obvious to one having

ordinary skill in the art at the time the invention was made to modify the data analyzer of Kant by adding the feature of presenting duplicates with a representative packet for the benefit of saving display space of the window used for graphical display.

Re claims 4, Kant discloses reporting packet flows of a particular protocol (filtering the non-duplicate packets, column 2, lines 64-66).

Re claim 31, Kant discloses a data analyzer maintaining a communication link with each of the passive monitors, but fails to disclose issuing commands to the agents via the link to initiate and terminate data capture by the agents. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Kant to provide the above feature so that the data analyzer would perform network analysis for a given period of time without overloading its resource.

Allowable Subject Matter

5. Claims 5, 7-14 and 17-21 are allowed.
6. Claims 3, 24-30 and 33-38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hong Cho whose telephone number is 571-272-3087. The examiner can normally be reached on Mon-Fri during 7 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on 571-272-3088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

hc
Hong Cho
Patent Examiner
9/27/06

Chau T. Nguyen
CHAU NGUYEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600